

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 1

January 5, 2000

**SUBJECT: SEIZURE AND RELEASE OF FIREARMS**

**BACKGROUND:** One of the Department's eight functional objectives is the Recovery and Return of Property (Manual Section 1/130.40.) The Department makes every reasonable effort to recover lost or stolen property, to identify its owners, and to ensure its prompt return.

Penal Code (PC) Section 146 makes it a misdemeanor for any public officer, including any Department employee, to seize, withhold release of, or dispose of any person's property without due process or other lawful authority. These two duties must be accomplished while maintaining the Department's obligation not to release firearms to persons who are potential threats to the community.

The Department has been the subject of both claims and lawsuits as a result of officers failing to comply with one or both of these legal requirements. To ensure that all efforts are made to return property to its owner, as well as maintain the Department's obligation not to release firearms to persons who are potential threats to the community, the Department has reviewed and refined its procedures on the seizure and release of firearms.

**PURPOSE:** The law requires that firearms be returned to their owners unless the firearms are illegal to possess. Information related to the release of firearms is found in the Department Manual, the Detective Operations Manual, the California Penal Code, and the Family and Welfare & Institutions Code. This information, however, does not offer a comprehensive protocol for the release of firearms. This Order provides Department personnel with procedures for seizure, release and disposition of firearms.

**Note:** Procedures governing release of firearms seized as evidence of a crime and ordered for destruction by the court are not affected by this Order.

**PROCEDURE:**

**I. SEIZURE OF FIREARMS.**

**A. Officer's Responsibility.** When seizing a firearm, officers shall in addition to complying with Manual

January 5, 2000

Section 4/216.07, determine if a court order exists or is warranted.

If at the time a firearm is seized an officer becomes aware of a court order, (e.g. Emergency Protective Order, Domestic Violence Restraining Order), which is not in the Domestic Violence Restraining Order System (ROS), the officer shall ensure the court order and accompanying Department report(s) are immediately submitted to a watch commander for approval.

When a booking officer has reasonable cause to believe that the release of a firearm could likely result in endangering the victim, reporting party or other party, the officer shall include information in the related report(s) describing "clear and convincing" evidence that will support a court petition to determine if a firearm should be returned.

**B. Watch Commander's Responsibility.** Watch commanders are reminded of the critical importance of immediate and accurate entry of court orders into the ROS. Watch commanders shall ensure that all reports involving court orders not already entered in the ROS are immediately delivered to the Area Record's Unit and entered into the ROS. If the Area Record's Unit is not staffed, watch commanders shall cause the order to be immediately delivered to a Record's Unit, or to Records and Identification Division for immediate entry into the Domestic Violence Restraining Order System.

**II. RELEASE OF FIREARMS.** Only sworn detective personnel shall approve the release of firearms. Any person appearing before an Area desk requesting the release of a firearm shall be referred to the Operations Support Division (OSD) detectives during their normal operating hours.

**A. Operations Support Division Investigating Officer Responsibility.** Investigating officers or their immediate supervisor, shall ensure that all firearms are returned to the lawful owner after determining whether the individual is lawfully entitled to possess the firearm.

January 5, 2000

In addition to existing procedures outlined in the Department Manual concerning the release of firearms, investigating officers shall:

- \* Prior to releasing a firearm, check the owner/possessor's criminal history, the Domestic Violence Restraining Order System (ROS), the Mental Health Firearms Prohibition System (MHFPS) and the Consolidated Criminal History Reporting System (CCHRS) to verify there are no legal restrictions to the owner/possessor possessing the firearm; and,
- \* Inquire of the victim, suspect, and person reporting, if any restraining order(s) exist.

The Department is not required to return firearms to persons who cannot legally possess them, including persons who are restricted by a court order.

If a firearm was seized pursuant to 12028.5 PC and the owner/possessor disposes of the firearm by selling it to a licensed firearms dealer, the Department must release the firearm(s), except contraband, to the properly licensed firearms dealer authorized to take possession of and dispose of the firearms on behalf of the owner. This process only applies to firearms seized pursuant to 12028.5 PC and is authorized by Section 6380.5 of the Family Code.

The Department must accept any reasonable proof of ownership. Registration in the name of the lawful owner shall constitute proof of ownership. However, a lack of registration does not constitute a lack of proof of ownership unless registration is required by law for possession and/or ownership of the gun. Unless there is articulable probable cause to disbelieve a sworn declaration from the claimant/owner, a sales receipt, or other proof of ownership from the claimant shall constitute proof of ownership.

**III. PETITIONING THE SUPERIOR COURT TO HOLD A FIREARM.** With the cooperation of the City Attorney's (CA) Office, a formal procedure has been developed to assist employees in petitioning the Superior Court to determine if firearms confiscated should be returned to the owner or otherwise disposed of as directed by the Court.

January 5, 2000

The CA has developed a form titled "City Attorney Request for Petition" to facilitate obtaining a petition to determine if a firearm should be returned.

If an investigating officer has reasonable cause to believe that the release of a firearm would likely result in endangering the victim, reporting party or other party, the investigating officer shall:

- \* Complete a Property Disposition/Update Request, Form 10.06.0, and forward it to the Property Disposition Coordinator to place an investigative hold on the firearm in the Automated Property Information Management System (APIMS), to prevent the unintentional release or destruction of the weapon prior to the Court's decision;
- \* Ensure all reasonable efforts are made to locate the owner/possessor of the firearm;
- \* Prepare a Follow-up Investigation, Form 3.14, describing the "clear and convincing" evidence in support of a petition to determine if a firearm should be returned, and obtain approval of a Detective III or above;
- \* Complete a City Attorney Request for Petition;
- \* Ensure notification is made to the owner/possessor of the intent to file the petition;
- \* Deliver the original City Attorney Request for Petition, a copy of all related police reports, a copy of the owner/possessor's criminal history, ROS, MHFPS and CCHRS printouts, to Detective Headquarters Division (DHD) within four calendar days from the date of seizure or upon determining the firearm should not be returned;

**Note:** In cases where the investigating officer is unable to deliver the material to DHD, the investigating officer shall cause an employee who is familiar with the case to deliver the material to DHD.

- \* Assist the CA's Office with the preparation of a declaration for the petition;
- \* Appear at Superior Court hearings, as requested by the CA's Office, to offer information concerning the potential danger to a victim, reporting party, or other party; and,

January 5, 2000

- \* Dispose of the firearm only as directed by the Superior Court.

**Note:** Penal Code Section 12028.5 provides that firearms seized at the scene of a domestic dispute shall be made available to the owner/possessor in no less than 48 hours, but no longer than 72 hours after the seizure. If the 48 to 72 hour release time occurs on a weekend or holiday, the officer shall indicate that the firearm will be made available to the owner/possessor, by the investigating officer, on the next administrative working day.

- A. **Court Disposition of Petition.** If it is determined by the court that a firearm should be returned to the owner/possessor, the investigating officer shall:

- \* Complete a Follow-Up Investigation, Form 3.14, detailing the court case number, the date the hearing was held, the date the court order was made if different from the date of hearing, and the name and department of the judge who ordered the return of the firearm; and,
- \* Cause the firearm to be released to the owner as ordered by the court.

- B. **Court Ordered Destruction.** If the court determines that a firearm should be destroyed, the investigating officer shall complete a Property Disposition/Update Request, Form 10.6, detailing the court case number, the date the hearing was held, the date the court order was made if different from the date of hearing, and the name and department of the judge authorizing the destruction of the firearm. Attach a copy of the court order to the Form 10.6.

- IV. **DETECTIVE HEADQUARTERS DIVISION RESPONSIBILITY.** The Commanding Officer, Detective Headquarters Division, shall provide liaison between the Department and the City Attorney's Office in processing and coordinating the petition to determine if a firearm should be returned to the owner or otherwise disposed of as directed by the court.

January 5, 2000

Within two calendar days of receiving a City Attorney Request for Petition from detective personnel, DHD shall:

- \* Verify that the legal owner is not otherwise prohibited from possessing the firearm;

**Note:** If ownership of the firearm is prohibited by law, inform the investigating officer that the petition is unnecessary and that the firearm may be held or disposed of pursuant to the appropriate Penal Code section.

- \* Ensure the City Attorney Request for Petition has been completed correctly; and,
- \* Forward the City Attorney Request for Petition to the CA's Office, Police General Counsel Section for submission to the Superior Court.

**Note:** Currently this office is located at 200 N. Main Street, Room 1700, City Hall East, Los Angeles, California 90012, Mail Stop 140.

DHD shall also be responsible for ongoing liaison with the CA's Office and shall: .

- \* Create and maintain a control log for tracking all requests for petitions until their disposition;
- \* Upon receipt of any response to a petition, make telephonic notification to, and forward a copy of the response to the CA's Office, Police and Fire Services Division;
- \* Notify the investigating officer of the results of the petition and the appropriate disposition of the firearm as directed by the court;
- \* Contact Police and Fire Services Division to verify that the owner/possessor of the seized firearm has been notified by registered mail of the court's order regarding disposition of the firearm; and,
- \* Provide blank petition forms to all detective commands.

**AMENDMENTS:** This Order adds Section 4/565.10 to the Department Manual and amends Sections 4/216.07, 4/260.25 4/560.40, and 4/790.24.

January 5, 2000

**AUDIT RESPONSIBILITY:** The Commanding Officer, Detective Services Group, shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

A handwritten signature in dark ink, appearing to read 'Bernard C. Parks', is written over the typed name.

**BERNARD C. PARKS**  
Chief of Police

**DISTRIBUTION "A"**